

NOTICE

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LAWRENCE KOBUK,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12603
Trial Court No. 2NO-10-00268 CR

SUMMARY DISPOSITION

No. 0043— June 5, 2019

Appeal from the Superior Court, Second Judicial District, Nome, Raymond Funk, Judge, and the Statewide Three-Judge Sentencing Panel, Eric Smith, Anna Moran, and Trevor Stephens, Judges.

Appearances: Sharon Barr, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Mannheimer, Senior Judge, and Suddock, Senior Superior Court Judge.*

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Lawrence Kobuk was convicted, following a jury trial, of second-degree sexual assault for engaging in sexual penetration with D.A., knowing that she was incapacitated or unaware that a sexual act was being committed. Because this was Kobuk's third felony sexual offense, he was subject to a presumptive sentence of 99 years to serve.¹

The sentencing judge found that the 99-year presumptive term was manifestly unjust, and the judge therefore referred Kobuk's case to the three-judge sentencing panel.² The three-judge sentencing panel ruled that the 99-year term was not manifestly unjust, and the panel therefore returned Kobuk's case to the sentencing judge, who sentenced Kobuk to 99 years.

Kobuk appealed his conviction and sentence to this Court. This Court affirmed Kobuk's conviction and his sentence. Kobuk then filed a petition for hearing with the Alaska Supreme Court. The supreme court granted the petition and remanded the case to the three-judge sentencing panel for reconsideration. In particular, the supreme court directed the three-judge sentencing panel to reconsider Kobuk's case because of the panel's legal error in assuming that *Moore v. State* precluded the panel from considering Kobuk's age, military service, and post-traumatic stress disorder (PTSD) in determining whether the 99-year presumptive term was manifestly unjust.³

On remand, the three-judge sentencing panel held an evidentiary hearing and heard argument on Kobuk's claim that imposition of the 99-year presumptive term would be manifestly unjust. The evidentiary hearing primarily involved testimony from community members, who testified to Kobuk's mental health issues and his good deeds

¹ AS 12.55.125(i)(3)(E).

² AS 12.55.165.

³ *Moore v. State*, 262 P.3d 217 (Alaska App. 2011).

as a community member. At the first three-judge panel hearing, Kobuk's ex-wife and his daughter testified about his combat flashbacks and his good qualities as a father. Kobuk's former military comrade testified to Kobuk's heroism in Vietnam.

The State, for its part, introduced additional evidence of Kobuk's criminal history, which included two convictions for second-degree sexual assault, two convictions for third-degree assault, two convictions for fourth-degree assault (including one conviction that was pleaded down from a sexual assault charge), three convictions for importing or selling alcohol without a license, convictions for disorderly conduct, shoplifting, and violating conditions of release, and six probation violations. The judge who sentenced Kobuk for the prior sexual assault convictions had found Kobuk to be "a most dangerous offender" who was a "danger to the public" with an "absolutely shocking" attitude toward women.

There was no evidence presented at the evidentiary hearing that Kobuk felt remorse for what had happened. Nor was there any evaluation of Kobuk's risk as a sex offender with at least three instances of sexual assault in his background.

After hearing the evidence presented and considering the arguments of the parties, the three-judge sentencing panel again found that it would not be manifestly unjust to sentence Kobuk to the presumptive 99-year term. The panel indicated that it had "carefully considered the entire record and all of the arguments presented including those with respect to Kobuk's age, his military service, and his PTSD." The panel focused its comments on Kobuk's past failed rehabilitative attempts and the fact that he had taken "no effective steps towards rehabilitation."

Kobuk moved for reconsideration, arguing that the record established that he had made some efforts towards rehabilitation. The three-judge sentencing panel granted the motion for reconsideration and issued a new order affirming its decision that imposition of the 99-year term would not be manifestly unjust in Kobuk's case. In its

order on reconsideration, the panel emphasized that Kobuk had undermined past rehabilitative efforts and had continued to engage in the same criminal behavior. The panel further found that it was “highly unlikely that [Kobuk] will ever stop drinking and that when he drinks, he is very dangerous given the sexual assaults and other assaults he has committed.” The panel therefore returned Kobuk’s case to the superior court, where he was again sentenced to the presumptive 99 years.

Kobuk now appeals, arguing that the three-judge sentencing panel erred when it failed to find that it would be manifestly unjust to sentence him to the 99-year presumptive term. We have independently reviewed the record in this case. Given Kobuk’s past sexual and physical assaults, his prior failed attempts at rehabilitation, and the lack of any sex offender risk assessment or other substantial evidence that he is rehabilitatable, we conclude that the three-judge sentencing panel’s decision is not clearly mistaken.⁴

Accordingly, the judgment of the superior court is AFFIRMED.

⁴ *McClain v. State*, 519 P.2d 811, 814-15 (Alaska 1974).